

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

WILLIAM JOSEPH CALDWELL, SR.,

Petitioner,

v.

**CIVIL ACTION NO. 3:05CV23
(BROADWATER)**

**EDWARD J. RUDLOFF, Administrator,
Eastern Regional Jail; and
JIM RUBENSTEIN, Commissioner of Corrections,**

Respondents.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated December 12, 2005. To date, no objections to the Report have been filed. Upon review of the Report, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

The Court thus **ORDERS**

- 1) petitioner's petition (**Docket # 1**) is construed as a civil action under 42 U.S.C. § 1983 and is **DISMISSED WITH PREJUDICE** for failure to state a claim for the reasons set forth in the Report and Recommendation;
- 2) respondents Rubenstein and Rudloff's Motion to Dismiss or in the Alternative for Summary Judgment (**Docket # 6**) is **GRANTED**;
- 3) petitioner's Motion to Appoint Counsel (**Docket # 8**) is **DENIED**; and
- 4) this action be and is hereby **STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this 23rd day of January 2006.


**W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE**